Supreme Court, U.S.
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No. 91-1084

In the
Supreme Court of the United States
October Term, 1991

PATRICIA COTLOW, ET AL.,
Appellants,

v.

JAMES EMISON, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

APPELLEES' MOTION TO DISMISS APPELLANTS' APPEAL AND AFFIRM AND REINSTATE THE ORDER OF STAY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

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No. 91-1084

In the

Supreme Court of the United States

October Term, 1991

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all citizens of Minnesota similarly situated; Joan Growe, Secretary of State of the State of Minnesota; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventy-Seventh Minnesota State House of Representatives; and the Seventy-Seventh Minnesota State Senate,

Appellants,

vs.

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated; Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Appellees.

Appeal from the United States District Court for the District of Minnesota

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I. STATEMENT OF FACTS

The litigation underlying this appeal is the consolidation of two federal district court actions. The first was brought by plaintiffs below and appellees here James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all citizens and voters of the state of Minnesota similarly situated ("the Emison plaintiffs"), and asked that a three-judge district court panel be formed to adopt legislative and congressional redistricting plans for Minnesota that meet constitutional and other legal requirements in the event that the Minnesota legislature fails to do so. The second action was brought by plaintiffs below and appellees here Duane Benson, Terry Dempsey, Dolores Hettig, Richard Harmon, David E. Peterson, E. M. Patricia Pidcock, and Frank Ringsmuth ("the Benson plaintiffs"), and asked that the federal district court find unconstitutional a legislative redistricting plan adopted by the Minnesota legislature as Minnesota Laws 1991, Chapter 246, on a party-line vote at the end of the legislative session in May 1991.[1]

A state court action that raises many but not all of the same issues as those raised by the Emison plaintiffs was also instituted, and an ad hoc three-judge state panel was created to consider that matter (hereinafter "the state panel"). See Cotlow v. Growe, MX 91-001562 (Minnesota Special Redistricting Panel).

Following the initial pretrial conference before the three-judge panel of the district court (hereinafter "the District Court") below on July 22, 1991, two separate cross-motions were brought: a motion by the Emison plaintiffs for stay of the parallel state proceedings and a

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[1]The Governor of Minnesota attempted to veto Chapter 246, but in August 1991 a state district court judge ruled the veto to be invalid for procedural reasons.

motion by the legislature, intervening defendants below and appellants here, for abstention by the District Court.[2] On August 21, 1991, the District Court issued a Memorandum Opinion and Order concluding that Scott v. Germano, 381 U.S. 407 (1965), requires "both state and federal courts to defer to the legislature to draw a valid redistricting plan unless the legislature fails to act in a timely fashion." See Emison v. Growe, Memorandum Opinion (D. Minn., Aug. 21, 1991), Appellants' Appendix to Jurisdictional Statement A-39, A-48 ("Memorandum Opinion").[3] In the event that the legislature failed "to act in a timely fashion," the District Court specifically indicated that it would retain jurisdiction, given the time limitations for appeals of any state panel actions and the additional legal issues pending only before the District Court. See id. at A-43 - A-51. It therefore denied the legislature's motion to abstain. See id. at A-49. At the same time, and in order to insure that a valid redistricting plan would be in place for the 1992 state election process, the District Court indicated that it would develop a contingency plan to be announced only in the event the legislature failed to pass valid plans both for legislative and congressional districts. See id. at A-50. To that end, the District Court appointed special masters and acquired access to a computer system and program to begin preparing its contingent redistricting plans. In light of the

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[2]The "Minnesota State House of Representatives" and the "Minnesota State Senate" serving as parties to this action are essentially the Democratic-Farmer-Labor Party majority caucuses, or the majority caucus leadership in those bodies, who selected and engaged counsel. In fact, the Benson plaintiffs, appellees here, include Duane Benson and Terry Dempsey, who are Independent-Republican Party minority caucus leaders in the Minnesota State Senate and Minnesota State House of Representatives, respectively.

[3]The Appellants' Appendix to Jurisdictional Statement at A-48 fails to include the District Court's express reference to Scott v. Germano, 381 U.S. 407 (1965), as the legal authority for this required deference to the legislature.

District Court's determination regarding deference to state legislative action, the Emison plaintiffs' motion to stay the state proceedings was also denied. See id. at A-51.

Contrary to the determination of controlling law set forth in the District Court's Memorandum Opinion, the state panel continued its proceedings. After finding Chapter 246 unconstitutional on its face, the state panel proceeded to formulate a legislative redistricting plan for Minnesota. On December 5, 1991, following issuance by the state panel of its preliminary legislative redistricting plan, the District Court, noting the state panel's "direct violation of federal law" and the "intimidating" effect of a state court plan issued prior to the scheduled January 1992 legislative session, issued a stay of all state panel proceedings to prevent the implementation of any such plan. See Emison v. Growe, Civil No. 4-91-202, Order of Stay of All Proceedings Before the Minnesota Special Redistricting Panel, Appellants' Appendix to Jurisdictional Statement A-1, A-11, A-14 (D. Minn., Dec. 5, 1991) ("Order of Stay"). In issuing its Order of Stay, the District Court stated that it viewed the action of the state panel as being "in direct violation of federal law and interfering with the continuing jurisdiction of [the District Court]." Id. at A-11. The state panel nonetheless issued its final legislative redistricting plan on December 9, 1991, and set January 17, 1992, as the date for submission to it of congressional redistricting plans by the parties to that action.

Appellants by this appeal challenge the District Court's Order of Stay of the state panel proceedings, which this Court vacated on appellants' motion to expedite consideration of their Jurisdictional Statement. That stay, arguments on which were fully briefed in August 1991, was entered only to prevent the state panel's improper interference with both the District Court's jurisdiction and with the District Court's order requiring deference to the ongoing legislative process.

II. STATEMENT OF PURPOSE

This motion is brought by appellees to dismiss this appeal and to affirm and reinstate the order of the three-judge panel of the United States District Court for the District of Minnesota staying further proceedings of the Minnesota Special Redistricting Panel to aid the jurisdiction of the federal court and to protect the orders of that court.

III. STATEMENT OF THE CASE

A. The District Court Has Authority to Issue Its Stay Under the Anti-Injunction Act and is Not Prohibited from Doing So by that Act.

The Anti-Injunction Act provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." See 28 U.S.C. § 2283 (emphasis added). This statute permits a federal court to stay proceedings in a state court where, among other things, the injunction is necessary to aid the federal court's jurisdiction or to protect or effectuate that court's judgments. Appellants nonetheless argue that the statute prohibits the action taken here by the District Court. This argument, however, ignores the District Court's justification under the affirmative provisions of the Anti-Injunction Act and wholly avoids a discussion of the impropriety of the state panel's own actions in light of the District Court's August 21, 1991, Order and well-settled law requiring initial court deference to the legislative process in redistricting.

As shown below, the District Court's Order of Stay of the state panel redistricting proceeding was entered to protect federal jurisdiction and prior District Court orders

and to insure that the state legislature was given adequate opportunity to adopt a valid redistricting plan in a timely manner. Such an action is fully within the express authority granted by the Anti-Injunction Act.

1. The District Court's Order of Stay Was Necessary in Aid of Its Jurisdiction.

The District Court specifically found that its Order of Stay was necessary in aid of its jurisdiction in the redistricting matter and was therefore proper under the "aid of jurisdiction" authority of 28 U.S.C. § 2283. See Order of Stay, Appellants' Appendix to Jurisdictional Statement at A-10 - A-13. Under this provision of the Anti-Injunction Act, a federal court may issue an injunction against state proceedings where those state proceedings so interfere with a federal court's "consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." See Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 295 (1970). The District Court, fully cognizant of both the existence and scope of this power, held that its action was in fact necessary to protect its exercise of jurisdiction in this case. See Order of Stay, Appellants' Appendix to Jurisdictional Statement at A-10 - A-14 (citing, inter alia, Atlantic Coast Line, 398 U.S. at 295). The District Court determined that the Order of Stay was necessary, because the state panel's action in issuing a redistricting plan prior to the legislature's scheduled redistricting session in January 1992 was in violation of federal law and the District Court's August 21, 1991, Order requiring deference to the legislative process. That action thereby impaired the District Court's flexibility and authority to decide its case. See id.

The District Court issued its August 21, 1991, Order and Memorandum Opinion to insure full compliance with the mandates of White v. Weiser, 412 U.S. 783 (1973), Scott

v. Germano, 381 U.S. 407 (1965), and Reynolds v. Sims, 377 U.S. 533 (1964), by requiring judicial deference to the primary authority of the legislative process for enactment of valid redistricting plans. The Order was entered to provide an opportunity for unfettered legislative redistricting action, as well as in recognition of the need for continuing federal jurisdiction and the existence of federal issues not presented in the state action. See Memorandum Opinion, Appellants' Appendix to Jurisdictional Statement at A-45 - A-50. The District Court concluded that all courts -- state and federal -- must defer until the legislature in its January 1992 session could address redistricting. Id. at A-48. In the interim, however, the District Court expressly retained jurisdiction over the matter, recognizing it was best able to review all legal challenges within the limited time available to avoid disrupting the 1992 Minnesota election process. See id. at A-49 - A-50.

Despite knowledge of the District Court's Order and argument by the parties as to its meaning, the state panel proceeded with promulgation of its legislative redistricting plan.[4] The state panel proceeded to promulgate and to publish a plan that by its very existence flaunted the Order of the District Court and impaired the authority of the District Court to decide its case. By issuing a plan that

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[4]The impact of state court proceedings on the federal court's jurisdiction may be better understood in the context of the maneuvering of the legislature as a party to both the state and federal actions. The District Court issued its August 21, 1991, Order upon the intervening defendant legislature's request that the District Court abstain until the legislature acted in January 1992, and the District Court reached its decision based, in part, on the legislature's express representation to the court that valid redistricting plans would be passed by the state legislature in January 1992 and would subsequently become law. See Memorandum Opinion, Appellants' Appendix to Jurisdictional Statement at A-42, A-48 - A-51. As intervening defendant in the state action, the legislature then sought accelerated adoption of a legislative redistricting plan by the state panel, which in response advanced its schedule for issuing such a plan.

disregarded both the deference required where the legislature remains able to act and by determining that its plan presented no Voting Rights Act violations (an issue beyond the scope of the pleadings and over which the state panel lacked authority to act), the state panel improperly intimidated the legislative process by rendering its "advice" as to what it would find to be an appropriate legislative plan.[5] See Order of Stay, Appellants' Appendix to Jurisdictional Statement at A-10 - A-11.

The Order of Stay was entered to protect the District Court's express retention of jurisdiction and its superior ability to adjudicate all issues, as well as the District Court's August 21, 1991, Order directing judicial deference to the legislative process. See id. at A-5 - A-6, A-9 - A-14. The stay was within the District Court's authority as an injunction in aid of the court's jurisdiction. See Atlantic Coast Line, 398 U.S. at 295. Cf. Pennsylvania Bureau of Correction v. United States Marshals Serv., 474 U.S. 34, 40 (1985) (Construing parallel language in All Writs Act, which authorizes writs necessary in aid of a federal court's jurisdiction, this Court has held that a federal court may "issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.") (citing United States v. New York Tel. Co., 434 U.S. 159, 172 (1977)).

The procedures adopted by the District Court are consistent with this Court's directive in Germano, in which this Court vacated an initial district court stay and directed the district court to enter an order allowing the state to attempt to develop a valid redistricting plan, but "within a reasonable time." Germano, 381 U.S. at 409. In doing so, this Court specifically directed:

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[5]The order of the state panel applies only to legislative redistricting. Congressional redistricting proposals are only now being submitted by the parties in the state action.

> The District Court shall retain jurisdiction of the case and in the event a valid reapportionment plan for the State Senate is not timely adopted it may enter such orders as it deems appropriate, including an order for a valid reapportionment plan . . . .

Id. at 409-410 (emphasis added).

In seeking to justify the state panel's continued attempts to proceed, appellants deny the applicability of the "in aid of jurisdiction" injunctive power of the federal courts. See Jurisdictional Statement at 19-22. Appellants propose an overly narrow reading of the Anti-Injunction Act, arguing that application of the "in aid of jurisdiction" power exists only where the proceeding is an action in rem. See id. at 20.

Appellants' argument ignores both the language of the Anti-Injunction Act and this Court's interpretation of that language in Atlantic Coast Line. See Atlantic Coast Line, 398 U.S. at 295. Neither the statute nor the Court's interpretation imposes an in rem limitation on the "in aid of jurisdiction" authority to issue a stay, and Atlantic Coast Line in fact suggests that such a stay may be issued whenever a state court's actions interfere so seriously with a federal court's adjudication that the latter's flexibility and authority to decide that case are seriously impaired. See id. See also Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839, 872 (N.D. Ill. 1971) (Injunction against state court proceedings in redistricting case was merited where those proceedings could not provide constitutional and timely solutions to the problems at issue). In this action, where a state panel has proceeded in violation of applicable federal law as described in the District Court's August 21, 1991, Order, thereby interfering with the jurisdiction of a court better positioned to resolve all aspects of a dispute, the stay was clearly within the District Court's power. See 28 U.S.C. § 2283; see also Laker Airways v. Sabena,

Belgian World Airlines, 731 F.2d 909, 930 (D.C. Cir. 1984).

2. The District Court's Order of Stay Was Necessary in Aid of Its Jurisdiction from Its 1982 Continuing Redistricting Orders.

Independent of the District Court's authority to issue a stay in aid of its 1991 jurisdiction, the stay is also necessary as a protection of continuing federal jurisdiction established in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), aff'd sub nom. Orwoll v. LaComb, 450 U.S. 966 (1982) ("LaComb I") and LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) ("LaComb II"). In LaComb I, Minnesota's current congressional districts were established by an order of the District Court that provided:

> We continue to enjoin the defendants, including Joan Growe, Secretary of State of Minnesota, from holding or conducting any future elections for Congress under any apportionment plan except that which we adopt today or a constitutional plan adopted after this date by the State of Minnesota.

See LaComb I, 541 F. Supp. at 151. The state of Minnesota has not adopted a constitutional plan for congressional districts since the District Court's 1982 order. The District Court's continuing 1982 order in LaComb I has therefore been the sole source of control over the conduct of congressional elections since that order was entered. It has not been amended or dissolved. The Secretary of State and all other Minnesota election officials remain subject to it. No other court can order a new plan of congressional districts without colliding directly with the authority of the District Court's LaComb I order. Absent further action by the District Court, no congressional election can be held except under that court's 1982 plan.

Similarly, the District Court's 1982 order in LaComb II,

establishing state legislative districts, remains in place. The Minnesota legislature codified the District Court's plan for legislative districts. See Minn. Stat. §§ 2.019, 2.042-2.702. However, under the plain language of the LaComb II order, which parallels the language from LaComb I, future legislative elections must be governed by either the federal court's original plan or a "constitutional plan adopted after this date by the State of Minnesota." See LaComb II, 541 F. Supp. at 167.

Because the 1982 plan for legislative districts is admitted by all parties to be unconstitutional and no subsequent constitutional plan has been adopted by the state of Minnesota, control over legislative elections continues to rest with the District Court. No action can be taken by any other court until the provisions of the continuing order have been resolved or the order vacated.

The state panel in the parallel action cannot act on any redistricting plan -- congressional or legislative -- without eventually colliding with the federal judiciary's continuing jurisdiction. That collision was effectively avoided by the District Court's Order of Stay. The state panel's demonstrated desire to publish an advisory redistricting plan immediately prior to reconvening of the current legislative session, which occasioned the Order of Stay, serves only to interfere with the federal judiciary's jurisdiction. The state panel's actions ignore the deference to the legislative process required by law, as stated in the District Court's August 21, 1991, Order. The District Court's Order of Stay of state proceedings was clearly merited. See 28 U.S.C. § 2283.

3. The District Court's Order of Stay Was Necessary to Protect Its Prior Judgments and Orders.

The District Court's action is likewise supported by Anti-Injunction Act authority for protection or effectuation of the District Court's judgments. See 28 U.S.C. § 2283.

The state panel's action is directly contrary to the District Court's August 21, 1991, Order, in which the District Court, after full briefing by the parties, determined that Germano requires deference by all courts -- state and federal -- to the legislative process. See Memorandum Opinion, Appellants' Appendix to Jurisdictional Statement at A-48. The issuance of a legislative redistricting plan by the state panel is contrary to the District Court's determination that federal law prohibits the imposition of judicial judgments when there still is opportunity for the process to accomplist redistricting. See Order of Stay, Appellants' Appendix to Jurisdictional Statement at A-5 - A-11. The District Court therefore was authorized under the Anti-Injunction Act to enjoin the state panel's proceeding. See 28 U.S.C. § 2283; Sperry Rand Corp. v. Rothlein, 288 F.2d 245, 248-49 (2d Cir. 1961) (§ 2283 applies to interlocutory orders); 17 C. Wright, A. Miller & E. Cooper, Federal Practice & Procedure § 4226 at 550 (2d ed. 1988, Supp. 1991) (suggesting § 2283 "judgment protection" injunction authority applies to interlocutory orders).

This Court's decision in Chick Kam Choo v. Exxon Corp., 486 U.S. 140 (1988), reinforces a determination that the "protection of judgments" provision of the Anti-Injunction Act applies here. In Chick Kam Choo, this Court determined that a federal district court's injunction of the prosecution of a wrongful death action in Texas or any other state's courts was overbroad to the extent the federal court's prior determination of forum non conveniens had not determined whether the Texas state courts, which operate under a broad "open-courts" mandate, would consider themselves to be an appropriate forum. Id. at 148. However, this Court also noted that the federal injunction was permissible to the extent that it enjoined the Texas court from applying Texas law, because the federal court had already decided that Singapore law controlled the case. This Court therefore recognized the applicability of the Anti-Injunction Act to prevent a state court's litigation of

"claims or issues" that "have been decided by the federal court." Id.

By formulating and publishing a judicial redistricting plan a month prior to the 1992 legislative session, the state panel necessarily determined that it was not required to defer to the legislative process. The state panel's approach therefore unavoidably conflicts with the District Court's prior express decision. The Order of Stay of the state panel proceedings was therefore within the federal court's authority under the Anti-Injunction Act as a means of protecting the August 21, 1991, Order. See 28 U.S.C. § 2283.

The District Court has similar authority to enjoin the state panel to protect the judgments reached by the District Court in the LaComb decisions. Those judgments by their own language continue in force. The state panel by its actions improperly seeks to overturn and interfere with those continuing orders. Such an attempt necessarily triggers the federal judiciary's authority under the Anti-Injunction Act to issue stays necessary for the protection of the prior judgments. See 28 U.S.C. § 2283.

B. The District Court's Order of Stay Was Authorized Under the All Writs Act, 28 U.S.C. § 1651(a), to Aid Its Jurisdiction and Protect Its Prior Orders.

Appellants suggest that a federal court may not issue an injunction to protect its jurisdiction within the meaning of 28 U.S.C. § 1651 until the court has rendered a judgment in its own proceeding and that, in any case, the state court in this matter first obtained jurisdiction, meriting the exclusion of action by other courts. See Jurisdictional Statement at 26-28. Appellants' arguments are without merit.

The All Writs Act expressly provides that:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 1651(a). The breadth of the power of the federal courts under this provision is demonstrated both by the language of the provision itself and by this Court's subsequent interpretations of that language. See, e.g., Pennsylvania Bureau of Correction v. United States Marshals Serv., 474 U.S. 34, 40-43 (1985). The All Writs Act provides authority to a federal court to issue writs to protect its own judgments or orders. See Jurisdictional Statement at 25-26 (citing, inter alia, Pennsylvania Bureau, 474 U.S. at 40-43). As the Court in Pennsylvania Bureau specifically stated:

> [T]his Court consistently has construed the All Writs Act to authorize a federal court "to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained."

Pennsylvania Bureau, 474 U.S. at 40 (citing United States v. New York Tel. Co., 434 U.S. 159, 172 (1977)).

The District Court here specifically stated that its Order of Stay was issued to protect its August 21 and October 5 orders retaining federal jurisdiction and requiring deference to the Minnesota state legislature. See Order of Stay, Appellants' Appendix to Jurisdictional Statement at A-10 - A-12. These orders were issued under the authority of federal jurisdiction conferred in 28 U.S.C. § 2284. Protection of the orders therefore clearly falls within the federal court authority contemplated by Pennsylvania

Bureau. See Pennsylvania Bureau, 474 U.S. at 40.

Appellants' argument that a judgment is needed in a federal court before that court may act to protect its jurisdiction is without merit. Cf. Pennsylvania Bureau, 474 U.S. at 40 with Jurisdictional Statement at 26. As quoted above, this Court in Pennsylvania Bureau explicitly stated that a stay may issue from a federal court to protect orders previously issued by that court in exercising its jurisdiction. See Pennsylvania Bureau, 474 U.S. at 40.

Appellants' citation to Laker Airways v. Sabena, Belgian World Airlines, 731 F.2d 909, 928-29 (D.C. Cir. 1984), in support of their argument is likewise misplaced. In Laker Airways, the United States Court of Appeals for the District of Columbia Circuit considered the propriety of a district court's temporary restraining order against litigation instituted in the United Kingdom, where that litigation was brought to obtain an injunction against the action already commenced in the United States. See id. at 917-18. Thus, Laker Airways involved resolution of a dispute between American and English courts under principles of comity. In the comity analysis performed in Laker Airways, the court specifically recognized that, "[situations presenting questions as to the effectiveness and propriety of injunctions against other proceedings] may arise either before or after a judgment has been entered." See id. at 927 (footnote omitted) (emphasis added). In the court's opinion, therefore, the question was not whether a judgment was obtained in the action, but rather under what circumstances an injunction might issue. See id. at 926-33.

The appellate court in Laker Airways in fact permitted the injunction to protect the federal court's jurisdiction, where that jurisdiction was the one best able to consider fully all parties' claims.[6] See id. at 930. Laker Airways

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[6]Appellants in also arguing against the applicability of the Anti-Injunction Act "in aid of jurisdiction" authority for issuance of stays make the assumption that the District Court was motivated by a

recognized that the federal court's injunction was necessary in aid of that court's jurisdiction, and the injunction was therefore proper. See id.

1. The Propriety of an Injunction of Concurrent State Proceedings Is Not Dependent on Which Proceeding Was First Commenced.

Just as the propriety of a federal court's injunction is

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perceived exclusive jurisdiction over claims under Section 2 of the Voting Rights Act. See Jurisdictional Statement at 20 n.6. Appellants then maintain that such an assumption is erroneous and therefore imply that the District Court's decision was incorrect. See id.

It is clear from a reading of the District Court's Order of Stay that exclusive jurisdiction over Voting Rights Act claims was not the basis for the court's action. See Order of Stay, Appellants' Appendix to Jurisdictional Statement at A-10 - A-11. Rather, the District Court made plain that its concern, as was the court's in Laker Airways, was that the state action did not include all claims and arguments presented in the federal action and that the state action may therefore not be able to resolve all challenges to the redistricting plan in a timely manner. See id.

In any case, however, appellants incorrectly cite Hathorn v. Lovorn, 457 U.S. 255, 269 (1982) for the proposition that state courts necessarily have concurrent jurisdiction over claims arising under Section 2 of the Voting Rights Act. The issue in Hathorn was solely the state court's ability to determine the impact of Voting Rights Act § 5 requirements on state procedures. See id. at 257. The Supreme Court in its holding explicitly limited state court jurisdiction of § 5 issues to instances where the Voting Rights Act question arises collaterally. Id. at 266. As noted by this Court:

> [E]ven a finding of exclusive federal jurisdiction over claims arising under a federal statute usually will not prevent a state court from deciding a federal question collaterally.

Id. (quotation omitted). Although exclusivity of federal jurisdiction was therefore not an issue, the Court nevertheless suggested that federal court jurisdiction over § 5 was in fact exclusive. See id. at 267-68 & n.20. Thus, the state court jurisdictional issue faced in Hathorn was, by the Court's own language, "limited." Id. at 268-69.

not merely a matter of whether a judgment was first obtained in the federal court, it is likewise not simply a matter of which court first begins a case, with the court of first filing then holding jurisdiction to the exclusion of all other courts, as appellants contend. See Jurisdictional Statement at 27 (quoting Kline v. Burke Construction Co., 260 U.S. 226, 231 (1922)). Appellants' reliance on Kline for this proposition is unsupportable.

Kline involved the distinction between in rem and in personam jurisdiction. This Court held that in rem jurisdiction over a "thing" precludes similar jurisdiction by another court. See Kline, 260 U.S. at 231-32, 235. This is the rule that appellants cite, despite their simultaneous recognition that this controversy does not involve jurisdiction over a thing. See Jurisdictional Statement at 26-27.

Nevertheless, the Kline Court went on expressly to hold that the rule quoted extensively by appellants applied only to in rem jurisdiction. See Kline, 260 U.S. at 231-32, 235. Appellants, in relying upon this rule, have therefore wholly failed to recognize that the rule does not apply to this case.

2. The Propriety of the District Court's Order of Stay Is Not Dependent on the All Writs Act.

Finally, appellants fail to recognize that authority under the All Writs Act is not a necessary concomitant to support the District Court's action. Rather, as indicated by this Court in Pennsylvania Bureau:

> The All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling.

See Pennsylvania Bureau, 474 U.S. at 43. As demonstrated

above, the Anti-Injunction Act clearly supports the District Court's action in staying the state panel proceedings. In addition, the Anti-Injunction Act stands as independent authority for the imposition of a federal stay of state proceedings, where that stay is necessary either to protect the orders and judgments of the federal court or to protect the federal court's jurisdiction. See 28 U.S.C. § 2283. Accordingly, under the reasoning of Pennsylvania Bureau, the All Writs Act provides only any necessary residual authority in support of the District Court's action.

IV. CONCLUSION

As the District Court originally determined in its August 21, 1991, Order and Memorandum Opinion, the appropriate forum for determination of Minnesota redistricting issues in the first instance is the state's legislature, as originally argued by appellants. The state panel acted in contravention of this well-settled principle, ignored the District Court's determination and its establishment of procedures to develop contingent redistricting plans, and accelerated its proceedings to announce its legislative redistricting plan a month before the legislature was scheduled to meet in January 1992 to address that subject.

The District Court's Order of Stay ensured that the legislature properly would have the opportunity to adopt independently legislative and congressional redistricting plans that meet constitutional and other legal requirements after thorough consideration. In light of the federal and state judicial review schedules involved and the clear justification for the federal panel's continued protection of the entire legislature's right to conduct redistricting, this appeal is without merit. Accordingly, appellees request this appeal be dismissed and that the District Court's Order of Stay be affirmed and reinstated.

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Respectfully submitted,

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